

STATE OF MICHIGAN  
COURT OF APPEALS

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SHAMROCK HOLDINGS, L.L.C. and FAITH  
HOLDINGS, L.L.C.,

UNPUBLISHED  
March 28, 2006

Plaintiffs/Counter-Defendants-  
Appellees,

v

LEE D. KNAUF and BRUCE A. KNAUF,

No. 266340  
Oakland Circuit Court  
LC No. 2005-065058-CH

Defendants/Counter-Plaintiffs-  
Appellants.

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Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order granting summary disposition in favor of plaintiffs and adjudging them the sole owners of the property in dispute. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This dispute involves the conveyance of a property interest by American Aggregates Corporation to Grand Trunk Western Railroad Company in 1931. Plaintiffs are successors in interest to American Aggregates while defendants are successors in interest to Grand Trunk. At issue is whether American Aggregates conveyed only a right-of-way or easement interest to the railroad, or conveyed the land itself. Limiting its review to the document of conveyance, the trial court determined that it was the former and, because the land had ceased to be used for railroad purposes, conclude that it reverted to plaintiffs' estate.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

“A railroad may acquire in a strip of real property for use as a right of way, as in any real property, a fee simple absolute, a determinable fee, an easement, a lease, or a license, as may any other corporate entity or individual. The character of the interest acquired is determined by the language of the conveyance.” *Westman v Kiell*, 183 Mich App 489, 493; 455 NW2d 45 (1990).

Deeds are contracts. *Negaunee Iron Co v Iron Cliffs Co*, 134 Mich 264, 279; 96 NW 468 (1903). As with other contracts, the court’s duty in interpreting a deed “is to give effect to the parties’ intent as manifested in the language of the instrument.” *Dep’t of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005). If a deed contains no ambiguities, it is to be construed according to its terms. *Fry v Kaiser*, 60 Mich App 574, 577; 232 NW2d 673 (1975). If an ambiguity does exist, the court is to determine “the parties’ intent in light of the circumstances existing at the time of the instrument’s execution.” *Ross Properties v Sheng*, 151 Mich App 729, 735; 391 NW2d 464 (1986). Resolution of an ambiguity is generally a question of fact for the trier of fact, making summary disposition inappropriate. *Mahnick v Bell Co*, 256 Mich 154, 159; 662 NW2d 830 (2003).

As explained in *Quinn v Pere Marquette R Co*, 256 Mich 143, 150-151; 239 NW 376 (1931):

“Right of way” has two meanings in railroad parlance: the strip of land upon which the track is laid, and the legal right to use such strip. In the latter sense it may mean an easement. But in this State . . . the character of the title taken depends upon the language of the conveyance.

Where the grant is not of the land but is merely of the use or of the right of way, or, in some cases, of the land specifically for a right of way, it is held to convey an easement only.

Where the land itself is conveyed, although for railroad purposes only, without specific designation of a right of way, the conveyance is in fee and not of an easement. . . . [Citations omitted.]

The warranty deed at issue here conveyed to the railroad “All that certain piece or parcel of land . . . described as follows:

A railroad right of way sixty six (66) feet wide, being thirty-three (33) feet on either side of the center line of a switch track situated in Section 22, Oxford Township, Oakland County, Michigan, said tract of land beginning at the intersection of the center line of said switch track and the center line of Water Street, . . . said point of intersection being sixty (60) feet, more or less, north of the south line of Powell Street; said tract of land continuing northwesterly from the place of beginning over and across lands owned by the American Aggregates Corporation, to a point one hundred (100) feet southerly from the northerly boundary of said lands located in Section 22, Township and County aforesaid.

This language could be interpreted as referring to the right to use the land, in which case the deed would have conveyed only a right-of-way. See *Jones v Van Bochove*, 103 Mich 98, 100; 61 NW 342 (1894); *Veach v Culp*, 92 Wash 2d 570, 572-574; 599 P2d 526 (1979). But the

language could also be interpreted as referring to the land within an existing right-of-way, in which case the deed would have conveyed title in fee. See *Nature Conservancy v Kolb*, 313 Ark 110, 117, 119-120; 853 SW2d 864 (1993). Considering that the deed by which American Aggregates took title referred to existing railroad rights-of-way and that American Aggregates appears to have retained unto itself a right-of-way in the deed to the railroad, we conclude that the deed is ambiguous, making summary disposition inappropriate, and that the nature of the conveyance intended is a question of fact for the trier of fact to resolve. Therefore, the trial court erred in granting judgment for plaintiffs.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra